

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

ORDER

01-CR-6072L

v.

JAMES SUTTON,

Defendant.

Defendant, James Sutton (“Sutton”), appeared for his initial appearance on May 31, 2012. A petition alleging a violation of supervised release was filed on May 14, 2012. The allegation is that Sutton violated supervised release by committing a crime, criminal possession of a weapon and reckless endangerment relating to his alleged firing of a handgun at a vehicle in the City of Rochester, New York. Sutton was arrested on state charges and was detained there for a period but is now released from state custody since the matter has been referred to a state grand jury. The attorneys had advised the Court that the matter is to be presented to a state grand jury on September 19, 2012.

Once Sutton was released from state custody, his counsel in federal court moved for a hearing to consider releasing Sutton. The parties appeared on August 29, 2012, and presented arguments for and against the release of Sutton. Thereafter, I received a letter dated August 29, 2012, from the Government and another dated August 31, 2012, which contained a deposition from the alleged victim of the shooting. The Court also received a letter dated September 5, 2012, from defense counsel, with attachments.

I deny defendant's motion for release. Defendant has been charged with a most serious crime, shooting a handgun at occupants of a motor vehicle. Sutton claims that his accuser has motivation to fabricate. Apparently Sutton and the victim have had a prior history of disputes. Nevertheless, at this time, I believe detention is warranted. Unlike release issues prior to trial, there is a presumption for detention on a supervised release violation. The burden is on the defendant to establish by clear and convincing evidence that he will not flee or pose a danger to the community (FED. R. CRIM. P. 32.1(a)(6)). At this stage, Sutton has failed to carry that burden and, therefore, he shall be detained.

IT IS SO ORDERED.



DAVID G. LARIMER
United States District Judge

Dated: Rochester, New York
September 6, 2012.